

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,688

RICHARD L. WILHITE,

Appellant,

v.

UNITED STATES OF AMERICA,

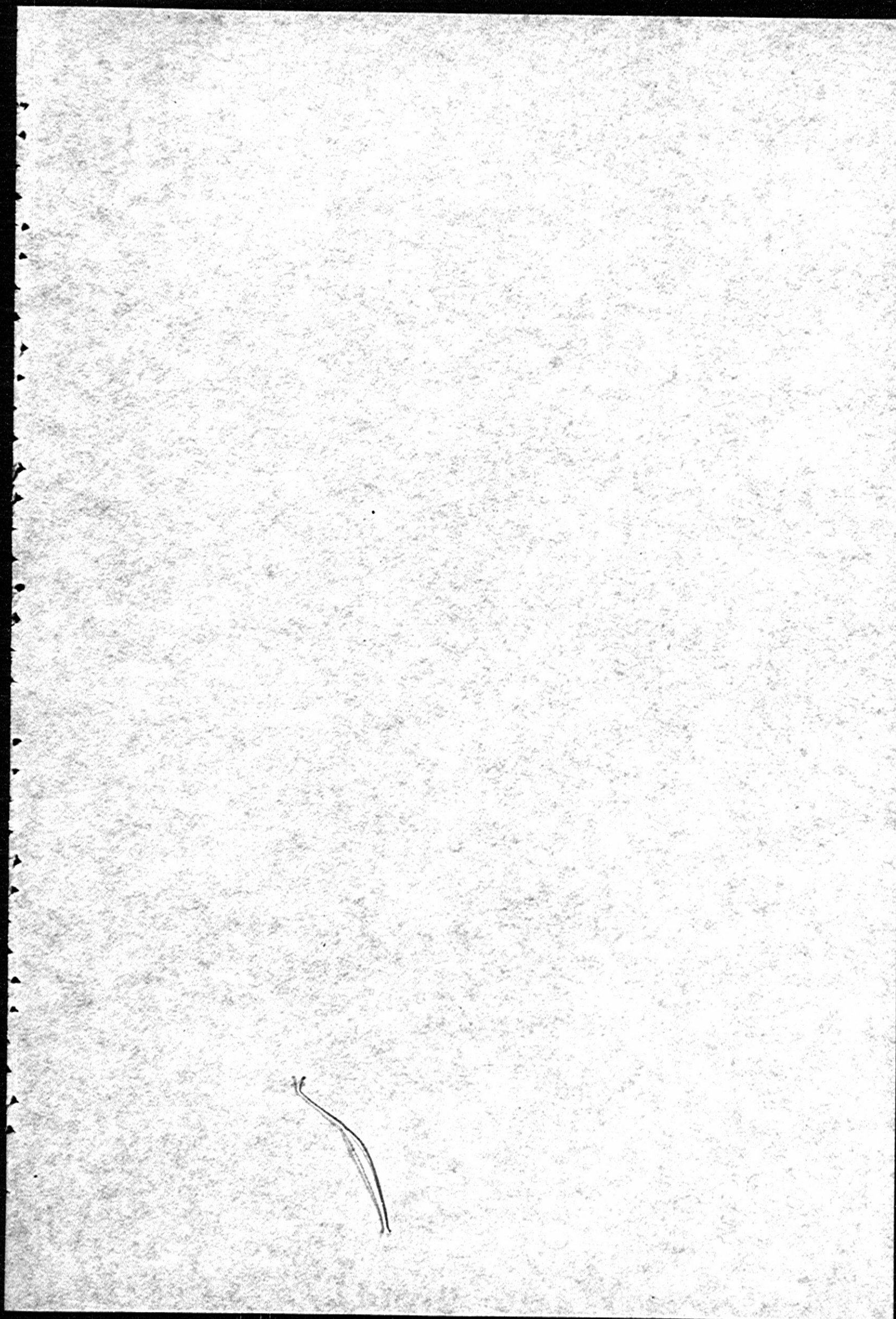
Appellee.

26

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

*United States Court of Appeals
For the
District of Columbia Circuit*
FILED JUN 13 1960

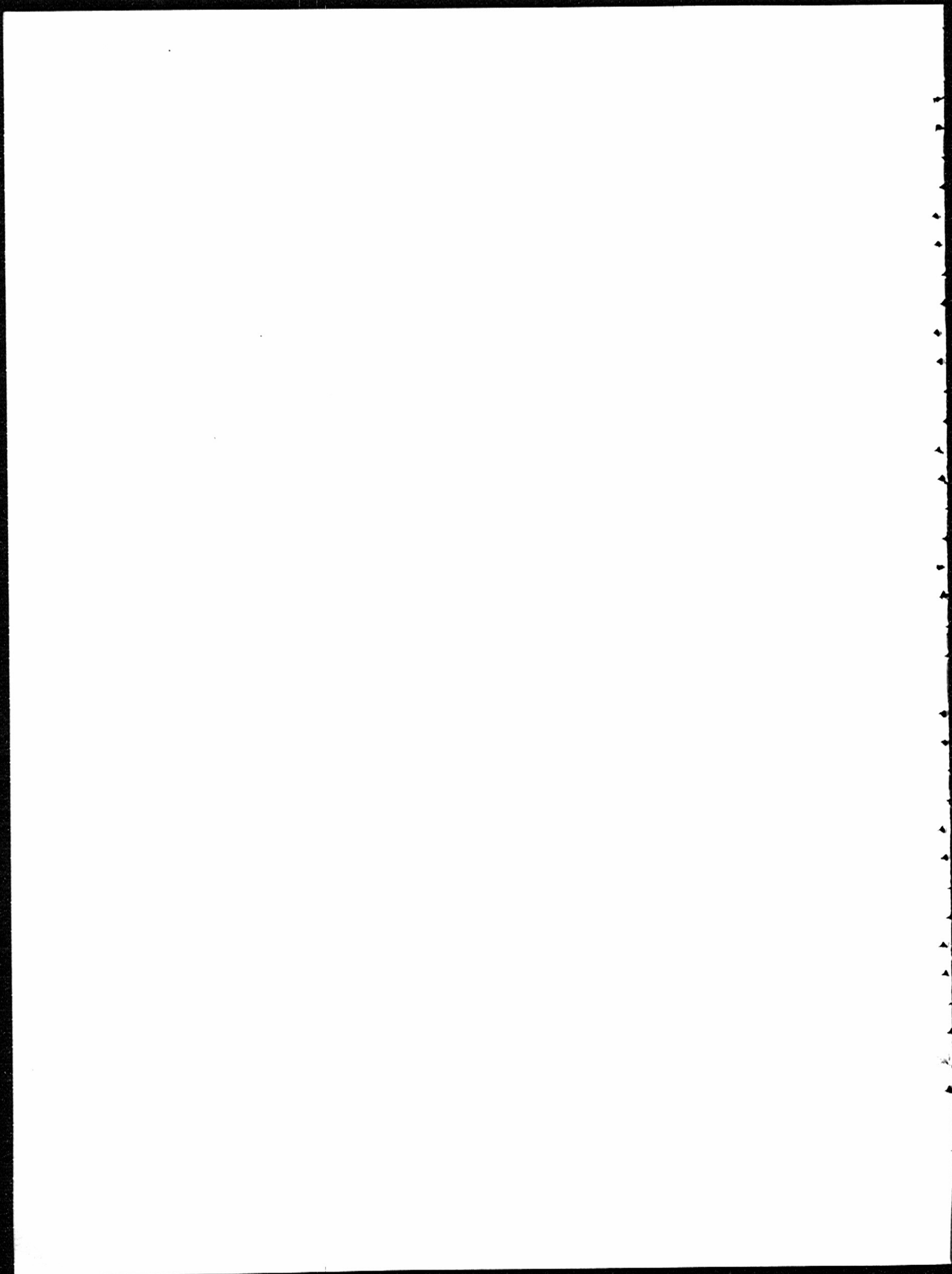
Joseph W. Stewart
CLERK



(i)

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JOINT APPENDIX

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA
CRIMINAL COURT

UNITED STATES : No. 69779
: Grand Jury No. 25856
vs. : Charge: First Degree Murder
RICHARD L. WILHITE :

Attorneys for Defendant: Arthur C. Katims; Roy St. Louis;
Chas. P. Swindler

DATE	PROCEEDINGS	U. S. Witnesses	Defendant's Witnesses
1942 May 18	Presentment and Indictment Filed	Margaret Wiles Edgar E. Scott MP	John Apostolides MP David Ceppos
1942 May 20	Appearance Arthur C. Katims entered	Irvin H. Umbough Dr. M. L. Cannon Dr. Edgar Griffin	Augusta Wade Mary Greene Chas. Zaimes
1942 May 22	Arraigned, Plea Not Guilty Indictment read (M117)	Dr. Albert Baur	Annie Gentry Mary E. Wilhite Wm. Parry A. B. Caffrey
1942 June 5	Petition for lunacy inquiry and certifi- cate of physician filed		Josephine Williams Joseph Wilhite Dr. Antoine Schneider Dr. Leonard M. Dub
1942 June 10	Order for lunacy inquiry filed (Letts, J.)(See Order) (M122)		
1942 July 9	Pauper Affidavit & Order filed (O'Donoghue, J.) (M122)		
1942 Sept 8	Lunacy Inquisition.		

Jury sworn and respited until tomorrow. (M120)

1942 Sept 9 Trial resumed, same jury; respited until tomorrow (M120)

1942 Sept 10 Trial resumed, same jury; Jury retires to consider their verdict, and at 10 P.M. the jury having not reached a verdict, are by agreement of counsel permitted to separate and return into Court tomorrow at 10 a.m. to deliberate further. (M120)

1942 Sept 11 Jury returns into Court. Verdict, deft is sane. Jury polled. Defendant remanded to Washington Asylum and Jail. (M120)

1942 Dec 30 Appearance of Arthur C. Katims is withdrawn. (Approved Eicher, J.)

1943 Jan 28 Plea Not Guilty withdrawn. Oral demurrer made, overruled. Exception. Indictment read. Arraigned. Plea Not Guilty. (M123)

1943 Feb 11 List of jurors served on deft Feb. 9, 1943, filed.

1943 Feb 15 Jurors from Criminal Divisions Nos. 1, 2, 3 & 4 sworn on voir dire. Jury sworn and respited until tomorrow. (M123)

1943 Feb 13 Name of witness served on deft Feb. 12, 1943, filed.

1943 Feb 16 Trial resumed, same jury; Plea 'Not Guilty' withdrawn, Plea guilty entered to Second Degree Murder. Sentenced to Imprisonment For period of 15 yrs to Life. Judgment Signed (McGuire, J.) (M123)

1946 Mar 14 Motion to set aside Plea & sentence, filed.

1946 July 23 Motion to set aside Plea & sentence argued & denied (M139).

1952 Apr 9 Motion of deft. to vacate & set aside sentence, Sec. 2255, T.28, U.S.C. and Affidavit in Support of Application for leave to proceed without prepayment of costs, filed.

1952 Apr 30 Motion of defendant to vacate & set aside sentence. Sec. 2255, T.28, USC. Denied. There was a waiver of jurisdiction on part of Juvenile Court. McGuire, J. 4/28/52

1952 May 19	Motion of Deft. for reduction of sentence, filed.
1952 June 4	Motion for reduction of sentence Denied. (McGuire, J.) (N) as of 5/29/52.
1956 Jan 12	Motion of defendant to vacate judgment, set aside sentence, discharge defendant from custody, or in the alternative grant a new trial, filed. Cert. of Serv. (Prepared by deft.)
1956 Jan 18	Motion of defendant to vacate judgment, set aside sentence, discharge deft. from custody, or in the alternative grant a new trial, denied, absolutely without merit. January 17, 1956. McGuire, J. (N)
1956 Jan 25	Affidavit in support of application for leave to proceed on Appeal without prepayment of costs, filed. (Prepared by Deft.)
1956 Jan 31	Affidavit in support of application for leave to proceed on Appeal without prepayment of costs - DENIED. January 30, 1956, FILED. McGuire, J. (N)
1956 Feb 6	Motion of defendant for Waiver of Juvenile Court to U. S. District Court and certified copy of Investigation Report of Juvenile Court of the District of Columbia, DENIED, filed. McGuire, J. (N)
1956 Feb 13	Affidavit in support of application for leave to proceed on Appeal without prepayment of costs, filed. (Prepared by Deft.)
1956 Feb. 20	Affidavit in support of application for leave to proceed on Appeal without prepayment of costs - DENIED, February 16, 1956, McGuire, J. (N)
1960 Jan 11	Motion of the defendant to vacate judgment, set aside sentence and discharge petitioner from custody; for transcript of all proceedings without prepayment of costs; affidavit in forma pauperis in support thereof, filed.

- 1960 Feb 2 Opposition of Government to defendant's motion to vacate Judgment, set aside sentence, in discharge petition from custody, Sec. 2255, T28, USCode, filed. Cert. of Serv.
- 1960 Feb 25 Motion of Deft to vacate Judgment, set aside sentence and discharge petitioner from custody, under Sec. 2255, T. 28, U.S. Code - DENIED. McGuire, J. (N)
- 1960 Mar 14 Notice of Appeal from Denial of motion pursuant to Sec. 2255, T. 28, U.S. Code, filed. Clerk Fee \$5.00 paid and credited to the United States.
- 1960 Apr 2 Refusal of Deft to sign election against service of sentence, filed.
-

[Filed May 18, 1942]

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

District of Columbia, ss:

April Term, A. D. 1942

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one Richard L. Wilhite on, to wit, the fifteenth day of April, 1942, and at and within the District of Columbia aforesaid, feloniously and wilfully did perpetrate and attempt to perpetrate an offense punishable by imprisonment in the penitentiary, that is to say, feloniously and wilfully did then and there make an assault upon one Madeleine G. Matthes, then and there being, and then and there forcibly and against the will of the said Madeleine G. Matthes feloniously and wilfully did make the said assault with intent, then and there, to ravish and carnally know the said Madeleine G. Matthes; and that in and while perpetrating and attempting to perpetrate the said assault with intent to commit rape, the said Richard L. Wilhite feloniously, wilfully and purposely, with a certain knife, held in the hand of him, the said Richard L. Wilhite, did stab and wound the said Madeleine G. Matthes in and upon the chest of her, the said Madeleine G. Matthes, and thereby did give to the said Madeleine G. Matthes, in and upon her chest certain divers mortal wounds, of which said mortal wounds she, the said Madeleine G. Matthes on, to wit, the said fifteenth day of April, 1942, and at and within the District of Columbia, did die.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Richard L. Wilhite, at the time and place aforesaid, and in the manner and by the means aforesaid, feloniously, wilfully, and purposely, and in and while perpetrating and attempting to perpetrate the assault with intent to commit rape, did kill and murder the said Madeleine G. Matthes; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

SECOND COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one Richard L. Wilhite on, to wit, the fifteenth day of April, 1942, and at and within the District of Columbia aforesaid, feloniously and wilfully did perpetrate and attempt to perpetrate an offense punishable

by imprisonment in the penitentiary, that is to say, feloniously and wilfully did then and there make an assault upon one Madeleine G. Matthes, then and there being, and then and there forcibly and against the will of the said Madeleine G. Matthes feloniously and wilfully did make the said assault with intent then and there, to ravish and carnally know the said Madeleine G. Matthes; and that in and while perpetrating and attempting to perpetrate the said assault with intent to commit rape, the said Richard L. Wilhite feloniously, wilfully and purposely, with a certain hard, sharp instrument, the exact description of which is to the Grand Jurors aforesaid unknown, held in the hand of him, the said Richard L. Wilhite, did stab and wound the said Madeleine G. Matthes in and upon the chest of her, the said Madeleine G. Matthes, and thereby did give to the said Madeleine G. Matthes, in and upon her chest certain divers mortal wounds, of which said mortal wounds, she, the said Madeleine G. Matthes on, to wit, the said fifteenth day of April 1942, and at and within the District of Columbia, did die.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Richard L. Wilhite, at the time and place aforesaid, and in the manner and by the means aforesaid, feloniously, wilfully, and purposely, and in and while perpetrating and attempting to perpetrate the assault with intent to commit rape, did kill and murder the said Madeleine G. Matthes; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

THIRD COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one Richard L. Wilhite, on, to wit, the fifteenth day of April, 1942, and at and within the District of Columbia aforesaid, feloniously and wilfully did perpetrate and attempt to perpetrate a rape, that is to say, feloniously and wilfully did then and there make an assault upon one Madeleine G. Matthes, then and there being, and then and there forcibly and

against the will of the said Madeleine G. Matthes, forcibly and wilfully did ravish and carnally know the said Madeleine G. Matthes, and that in and while perpetrating and attempting to perpetrate the said rape, the said Richard L. Wilhite feloniously and wilfully did then and there, with a certain knife held in the hand of him, the said Richard L. Wilhite, stab and wound the said Madeleine G. Matthes in and upon the chest of her, the said Madeleine G. Matthes, and thereby did give to the said Madeleine G. Matthes, in and upon her chest, certain divers mortal wounds, of which said mortal wounds she, the said Madeleine G. Matthes, on, to wit, the said fifteenth day of April, 1942, and at and within the District of Columbia, did die.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Richard L. Wilhite, at the time and place aforesaid, and in the manner and by the means aforesaid, feloniously and wilfully and in and while perpetrating and attempting to perpetrate the offense of rape, did kill and murder the said Madeleine G. Matthes; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

FOURTH COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one Richard L. Wilhite, on, to wit, the fifteenth day of April, 1942, and at and within the District of Columbia aforesaid, feloniously and wilfully did perpetrate and attempt to perpetrate a rape, that is to say, feloniously and wilfully did then and there make an assault upon one Madeleine G. Matthes, then and there being, and then and there forcibly and against the will of the said Madeleine G. Matthes, forcibly and wilfully did ravish and carnally know the said Madeleine G. Matthes, and that in and while perpetrating and attempting to perpetrate the said rape, the said Richard L. Wilhite feloniously and wilfully did then and there, with a certain hard, sharp instrument, the exact description of which is to the Grand Jurors aforesaid unknown, held in the hand of him, the said Richard

L. Wilhite, stab and wound the said Madeleine G. Matthes in and upon the chest of her, the said Madeleine G. Matthes, and thereby did give to the said Madeleine G. Matthes, in and upon her chest, certain divers mortal wounds, of which said mortal wounds she, the said Madeleine G. Matthes, on, to wit, the said fifteenth day of April, 1942, and at and within the District of Columbia, did die.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Richard L. Wilhite, at the time and place aforesaid, and in the manner and by the means aforesaid, feloniously and wilfully and in and while perpetrating and attempting to perpetrate the offense of rape, did kill and murder the said Madeleine G. Matthes; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

FIFTH COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one Richard L. Wilhite, on, to wit, the fifteenth day of April, 1942, and at the District of Columbia aforesaid, contriving and intending to kill one Madeleine G. Matthes, then and there being, feloniously, wilfully, purposely and of his deliberate and premeditated malice, with a certain knife held in the hand of him, the said Richard L. Wilhite, did stab and wound the said Madeleine G. Matthes, in and upon the chest of her, the said Madeleine G. Matthes, and thereby did give to the said Madeleine G. Matthes, in and upon her chest, certain divers mortal wounds, of which she, the said Madeleine G. Matthes, on, to wit, the said fifteenth day of April, 1942, and at and within the said District of Columbia, did die.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Richard L. Wilhite, in the manner and by the means aforesaid, feloniously, wilfully, purposely and of his deliberate and premeditated malice, did kill and murder the said Madeleine G.

Matthes against the form of the statute in such case made and provided, and against the peace and government of the said United States.

SIXTH COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one Richard L. Wilhite, on, to wit, the fifteenth day of April, 1942, and at the District of Columbia aforesaid, contriving and intending to kill one Madeleine G. Matthes, then and there being, feloniously, wilfully, purposely and of his deliberate and premeditated malice, with a certain hard, sharp instrument, the exact description of which is to the Grand Jurors aforesaid unknown, held in the hand of him, the said Richard L. Wilhite, did stab and wound the said Madeleine G. Matthes, in and upon the chest of her, the said Madeleine G. Matthes, and thereby did give to the said Madeleine G. Matthes, in and upon her chest, certain divers mortal wounds, of which she, the said Madeleine G. Matthes, on, to wit, the said fifteenth day of April, 1942, and at and within the said District of Columbia, did die.

And so that Grand Jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Richard L. Wilhite, in the manner and by the means aforesaid, feloniously, wilfully, purposely and of his deliberate and premeditated malice, did kill and murder the said Madeleine G. Matthes; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

/s/ Edward M. Curran
Attorney of the United States in
and for the District of Columbia

[Filed February 16, 1943]

JUDGMENT AND COMMITMENT

On this 16th day of February, A. D., 1943, came the United States Attorney, and the defendant Richard L. Wilhite appearing in proper person, and by counsel, Messrs. Roy St. Lewis and Charles P. Swindler and the defendant having been convicted on his plea of guilty of the offense charged, in the indictment in the above-entitled cause, to wit: Second Degree Murder and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Fifteen (15) years to Life

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ Matthew G. McGuire

United States District Judge

[Filed April 9, 1952]

MOTION TO VACATE AND SET ASIDE SENTENCE SECTION 2255, TITLE 28, U. S. CODE

* * * * *

(1) Petitioner states that at the time of his arrest he was placed in the District of Columbia Jail and charged with First Degree Murder. Petitioner being a Juvenile at the time should not have been placed in the District of Columbia Jail, due to the fact that petitioner was brought in contact and communication with adults who were charged with crime or convicted of crime, and this was a strict violation of the District of Columbia, Juvenile Laws.

(See: 11 - 927 /18:276/ June 1, 1938, 52 Stat. 602, ch. 309, #26.)

(2) Petitioner was then indicated by the Grand Jury for First Degree Murder, and since the petitioner was a Juvenile at the time, he should not have been indicated in the United States District Court, for the District of Columbia. The Court which permitted the indictment was in error as the District Court lacked the necessary Jurisdiction over the petitioner due to the fact that he was a Juvenile at the time, and this was a strict violation of the District of Columbia, Juvenile Court Laws. (See: 11-914/18:263/ June 1, 1938, 52 Stat. 599, ch. 309, #13.)

* * * * *

(4) Petitioner was made to stand trial and upon the advice of his attorney entered a plea of guilty. Petitioner will show, as he was a Juvenile at the time, the Court did not have the proper Jurisdiction to accept the petitioner's plea, nor did the Court have the proper Jurisdiction to sentence petitioner to a term of fifteen (15) years to life, nor should the petitioner have been permitted to stand trial in the United States District Court. This was and still is a strict violation of the District of Columbia, Juvenile Laws.

(See: 11 - 913 /18:262/ June 1, 1938, 52 Stat. 599, ch. 309, #12.)

(See: 11 - 914 / 18:263/ June 1, 1938, 52 Stat. 599, ch. 309, #12.)

(See: Illinois Supreme Court decision in the case of Howard Lang.)

Petitioner will now show that his case should have been in the Juvenile Court before going into the District Court, for the District of Columbia. The following is an excerpt from a letter the petitioner received from the Honorable Judge Edith H. Cockrill, present Judge of the District Juvenile Court.

"Under our statutes, the Juvenile Court may waive jurisdiction in case of a child over sixteen years of age who is charged with the commission of a felony. This requires specific action on the part of the Juvenile Court and the District Court cannot proceed in such matters without a specific waiver from this Court."

* * * * *

[Filed April 30, 1952]

Motion denied. There was a waiver of jurisdiction on part of Juvenile Court. Original & photostat attached.

/s/ M. McGuire, J.
U. S. District Judge
4/28/52

IN THE JUVENILE COURT OF
THE DISTRICT OF COLUMBIA

After investigation, pursuant to Section 13 of the Juvenile Court Law, as amended, in the case of RICHARD L. WILHITE, the Juvenile Court waives jurisdiction and orders said boy held for trial under the regular procedure of the United States District Court for the District of Columbia.

Dated this 17th day of April, 1942.

/s/ Fay M. Beatty
JUDGE

[Filed January 12, 1956]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

vs.

Criminal No. 69779

RICHARD L. WILHITE
Box 25, Lorton, Va.

***MOTION TO VACATE JUDGMENT, SET ASIDE SENTENCE,
DISCHARGE DEFENDANT FROM CUSTODY, OR IN THE
ALTERNATIVE GRANT A NEW TRIAL**

* * * * *

(1) That the defendant is illegally incarcerated and deprived of his lawful liberty by virtue of a commitment issued by the United States District Court for the District of Columbia, a copy of which is filed in this Court and by reference made a part hereof.

(2) That the commitment was issued to enforce a judgment of this Court entered February 16, 1943, in the case of United States against Richard Wilhite, defendant, who was convicted of Second Degree Murder and sentenced to imprisonment a term of fifteen (15) years to life. A copy of the judgment of the aforesaid is filed in this Court and by reference incorporated herein and made a part of this action.

(3) That the judgment and commitment under which the defendant is imprisoned is void in that the Court was without jurisdiction to impose such sentence.

(4) That the defendant's Constitutional Rights were infringed upon by having been denied due process of law guaranteed by the 14th Amendment of our Constitution.

(5) That at the time of the commission of the alleged crime for which defendant was convicted, to-wit, April 15, 1942, he was a mere infant of sixteen years of age and not acquainted with the details of law and further there was no intent on the part of the defendant to commit any crime; there can be no crime due to defendant's youth.

(6) That while still a boy of sixteen years of age, the Grand Jury returned a True Bill against the defendant illegally on the 18th day of May 1942.

(7) That two days after the Grand Jury returned the True Bill, defendant was on the 22nd day illegally arraigned in the United States District Court for the District of Columbia.

(8) That at no time was this case referred to the Juvenile Court for the District of Columbia as required by Title 11, Section 913, District of Columbia Code. However, the records of the Juvenile Court state that jurisdiction was waived April 17, 1942. Such illegal waiver being less than two days after the commission of the alleged crime is contrary to Title 11, Section 913, District of Columbia Code, Title 11, Section 913, provides:

"If during the pendency of a criminal or quasicriminal charge against any person under 21 years of age, in any other court, it shall be ascertained that said person was under the age of 18

years at the time of committing the alleged offense, it shall be the duty of such court to transfer such other case immediately, together with all the papers, documents, and testimony connected therewith, to the juvenile court. Such other court making such transfer shall order the child to be taken forthwith to the place of detention designated by the court or to the court itself, or release such child in the custody of some suitable person to appear before the juvenile court at a time designated. The court shall thereupon proceed to hear and dispose of such case in the same manner as if it had been instituted in that court in the first instance."

(9) That the aforesaid Juvenile Court for the District of Columbia never made a full investigation of the case due to the fact that less than two days is not sufficient to make a full investigation of such alleged crime as the defendant was charged contrary to Title 11, Section 914 of the District of Columbia Code. Title 11, Section 914 provides:

"If a child 16 years of age or older is charged with an offense which would amount to a felony in the case of an adult, the judge, after full investigation, may waive jurisdiction and order such child held for trial under the regular procedure of the court which would have jurisdiction of such offense if committed by an adult; or such other court may exercise the powers conferred upon the juvenile court in this chapter in conducting and disposing of such case.

(10) That the Juvenile Court Judge was not a person of sound mind due to the fact she was suffering from a mental condition and has since been legally committed to St. Elizabeth's Hospital for the insane and has been a patient at that institution for a number of years.

(11) That the defendant is being illegally and unlawfully deprived of his liberty and rights as guaranteed by the Constitution of the United States and the statutes of the District of Columbia, i. e.; that he was illegally indicted, forced to plead at an arraignment while a juvenile and

under duress, forced to an adult procedure against his will, forced to enter a plea of guilty against his will, illegally convicted and sentenced by an adult court while still a juvenile and further; his rights were violated by a judge suffering from a mental disorder.

(12) That the entire proceedings were illegal, i. e., that the Court failed to take judicial notice of the legal status of the defendant at the time of the alleged crime.

(13) That defendant has no adequate or effective remedy to vacate or set-aside the judgment and sentence afore-mentioned. The remedy afforded by 28 U.S.C. Section 2255, by motion in the sentencing Court is inadequate and ineffective to test the legality of his detention for the following reason:

Defendant, through his attorney, filed a motion to set-aside Plea and Sentence on the grounds that the defendant was not of sound mind when tried and convicted in the District Court of the United States for the District of Columbia on the 14th day of March 1946. Said motion was argued and denied on the 23rd day of July 1946.

* * * * *

[Filed January 18, 1956]

Denied. Absolutely without merit.

/s/ M. McGuire, J.

1/17/56

[Filed February 6, 1956]

**MOTION FOR WAIVER OF JUVENILE COURT TO
UNITED STATES DISTRICT COURT AND CERTIFIED COPY
OF INVESTIGATION REPORT OF JUVENILE COURT
OF THE DISTRICT OF COLUMBIA**

* * * * *

That on the 29th day of March, 1952, defendant received a reply from the Juvenile Court of the District of Columbia, signed by Judge

Edith H. Cockrill, which reads as follows:

"I have your letter of March 24th referring to your previous letter of January 11th. The letter has not been answered because I considered my letter of January 3rd to satisfactorily answer your question.

Specifically, the Juvenile Court statute permits waiver of jurisdiction in the case of any child over sixteen years of age who is charged with the commission of a felony. This means that waiver may be granted if the child has passed his sixteenth birthday and has no relation to his seventeenth birthday.

The Juvenile Court is not required to make a specific type of investigation prior to waiving jurisdiction nor is there a hearing before the Judge of the Juvenile Court. Obviously, the matter cannot be tried in two Courts. A waiver can be granted almost immediately upon the filing of the complaint.

All waivers are put in writing and become a record of this Court. There is a signed waiver in your case which is part of the record but it is not possible to furnish you with a copy of same.

I have no further information to give you in regard to your case."

Very truly yours,

/s/ Edith H. Cockrill, Judge
Juvenile Court, in and for the
District of Columbia

*

*

*

*

*

Denied.

/s/ McGuire, J.

2/6/56

[Filed January 12, 1960]

MOTION TO VACATE JUDGEMENT, SET
ASIDE SENTENCE, AND DISCHARGE
PETITIONER FROM CUSTODY, SECTION
2255, TITLE 28, U.S. CODE . .

* * * * *

Petitioner, who at the present time is confined at the Lorton Reformatory, Lorton, Virginia, states that at this time, he is being denied his freedom under the laws of the Constitution, as petitioner can show and prove that due process was denied him, upon arrest, while under the jurisdiction of the Juvenile Court, and after being waived from Juvenile Court into the United States District Court, which is a strict violation of the Constitution of the United States of America, and more so, since petitioner was a juvenile at time of arrest and a citizen of the United States of America.

Petitioner will show and prove he was arrested after the close of the regular business day between the hours of 5:00 P. M. and 6:00 P. M. on April 15, 1942.

Petitioner will show and prove that he was taken immediately upon arrest to No. One (1) Precinct, which was a direct violation of petitioner's constitutional rights, as petitioner was a juvenile only sixteen (16) years of age.

Petitioner can show and prove that he was held incognito in No. One (1) Precinct for four (4) or five (5) hours, within a cell with adult prisoners, which is a direct violation of the laws of Juvenile Court.

Petitioner will show and prove that he was transported from No. One (1) Precinct about 9:00 P. M. to Police Headquarters, placed in the line-up three (3) times and then taken by police and detectives into a room, within police headquarters, made to answer all questions asked by both the police and detectives, and questioning took place about five (5) or six (6) hours, and then petitioner who was made to stand during the five (5) or six (6) hours of questioning, was told that if petitioner signed a confession, petitioner would be allowed to sit down, petitioner signed the confession, and this was a violation of petitioner's constitutional rights, as petitioner was a Juvenile, sixteen (16) years of age.

Petitioner now states that all of the statements made on pages two (2) and three (3) are fact and that his constitutional rights were violated, as petitioner can prove he was never taken before a Commissioner or any other officer with the power to commit as required in Mallory v. U.S., Upshaw v. U.S., Akowskey v. U.S., Watson v. U.S. and McNabb v. U.S. 318 U.S. 332.

* * * * *

Obviously, this was not done in the instant case, as petitioner was never taken before the commissioner or before any other nearby officer empowered to commit, thereby, said petitioner was denied due process of law, as petitioner was not informed by a committing magistrate of the charge or charges against him, petitioner was not advised of his right to counsel, nor, the right to a preliminary examine, nor was petitioner told of the privilege to refuse to make any statement, nor did anyone tell said petitioner that any statement petitioner might make could be used against him as in Rule 5(b) Federal Rules of Criminal Procedure, and it has become axiomatic since the rule of the Supreme Court in McNabb v. U.S., 318 U.S. 332, 87 L. Ed. 819 as recently reaffirmed by the Supreme Court in Mallory v. U.S. See also Upshaw v. U.S., 335 U.S. 410, 93 L. Ed. 100.

* * * * *

Petitioner further states that since he was only a juvenile (16 years of age) at the time of arrest, he should have been taken immediately before a commissioner or any officer with the power to commit, so all the rights of petitioner could have been guided very closely and more so, since petitioner was arrested for a capital crime.

* * * * *

Petitioner now claims, that since his rights were violated by not receiving due process of law, the sentence imposed is in violation of the constitution and laws of the United States and since the court was without legal jurisdiction to impose such sentence petitioner moves the court to vacate judgement, set aside sentence and discharge said petitioner from custody.

Petitioner now attacks the waiver from Juvenile Court, not on the grounds that said court, lacked the proper judicial power, but juvenile court did waive petitioner without making a full investigation as required by law (See Title 11, Section 914)(D. C. Code.)

Petitioner now states that a full investigation as required by law (Title 11-914 D.C.C.) was never conducted by Juvenile Court, nor anyone connected with said Court. Therefore, petitioner was denied due process of law.

Petitioner was never taken to Juvenile Court, nor was petitioner ever seen by any social worker connected with Juvenile Court, but yet, petitioner so claims the Juvenile Court was waived after an eight hour court day, thereby stating no investigation is necessary before granting a waiver from Juvenile Court to District Court.

Petitioner further states that he (petitioner) can produce to this Court a letter signed by a former Juvenile Court Judge stating, "This Court is not required to make any type of investigation, much less a full investigation, before a child is waived into District Court."

Title 11, Section 914, D. C. Code states: "If a child 16 years of age or older is charged with an offense which would amount to a felony in the case of an adult, the Judge, after full investigation, may waive jurisdiction, etc., and etc.

As stated by the Supreme Court and the Court of Appeals, "Petitioner must at all stages be protected by due process of law."

Title 11, Section 914, D.C.C. does not say, a child can be waived after investigation, nor does it say, a child after investigation may be waived, but says, after full investigation the court may waive.

Petitioner was not given due process of law, as required by the constitution; the Supreme Court, and the Court of Appeals, as the Juvenile Court failed not only to make a full investigation, but the Court (Juvenile) failed to make any kind of investigation, thereby, depriving petitioner of his constitutional rights.

*

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*

*

Petitioner now states that due process of law was denied him, by the Juvenile Court (as required under law of Title 11, Section 914) as the Court failed to have petitioner brought before the Court for the purpose of holding an informal hearing, Title 11, Section 915, and to make sure a full investigation was made, Title 11, Section 914, as stated in U.S. v. Dickerson.

PETITIONER'S WAIVER ILLEGAL

Petitioner was waived from Juvenile Court one (1) day after arrest was made, therefore, it was impossible for the Juvenile Court to have a full investigation made in petitioner's case, thereby, depriving petitioner of his rights by laws of the Juvenile Court as stated in U.S. v. Dickerson, U. S. App. D.C. No. 14959, 9/30/59, that a full investigation must be made before Juvenile Court can waive jurisdiction of a child into District Court, and that full investigation requires informal hearings before Juvenile Court can waive a case into District Court, since this was not done in petitioner's case, petitioner was denied due process of law while under the protection of the Juvenile Court, therefore, District Court did not have legal jurisdiction of petitioner's case as the waiver from Juvenile Court was permitted through error, as no full investigation or informal hearing was held in petitioner's case as required in U.S. v. Dickerson.

Petitioner further states that since the District Court acted upon petitioner's case without the legal jurisdiction and by error of the Juvenile Court, its judgment and sentence must be null and void; See U.S. v. Anderson 60 F. Supp. 649. The right of many decisions of the United Supreme Court of Appeals falls to the petitioner when he has been denied his constitutional safeguards * * *

* * * * *

[Filed February 25, 1960]

Denied.

/s/ McGuire, J. 2/25/60

[Filed March 14, 1960]

NOTICE OF APPEAL [Denial of Mot. Pur. to
Sec. 2255, T. 28, U.S.C.
Feb. 25, 1960.]

Name and address of Appellant: Richard L. Wilhite, Box 25, Lorton,
Virginia.

No Attorney.

Offense: Second Degree Murder.

Judgment and Sentence: Appellant was sentence to from 15 years to Life after a plea of guilty to Second Degree Murder. The District Court's denial of Motion To Vacate Judgment, Set Aside Sentence, and Discharge Appellant From Custody, Sec. 2255, Title 28, U.S. Code, based on new rulings by Court of Appeals and denial of Motion For Appointment Of Counsel.

Name of Institution where now Confined: D. C. Reformatory, Lorton,
Virginia.

I, the above-named appellant, hereby appeal to The United States Court Of Appeals For The District Of Columbia Circuit.

March 7, 1960
Date

/s/ Richard L. Wilhite,
RICHARD L. WILHITE,
Appellant

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15688

26

RICHARD L. WILHITE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

OLIVER GASCH,

United States Attorney.

CARL W. BELCHER,

FRANK Q. NEBEKER,

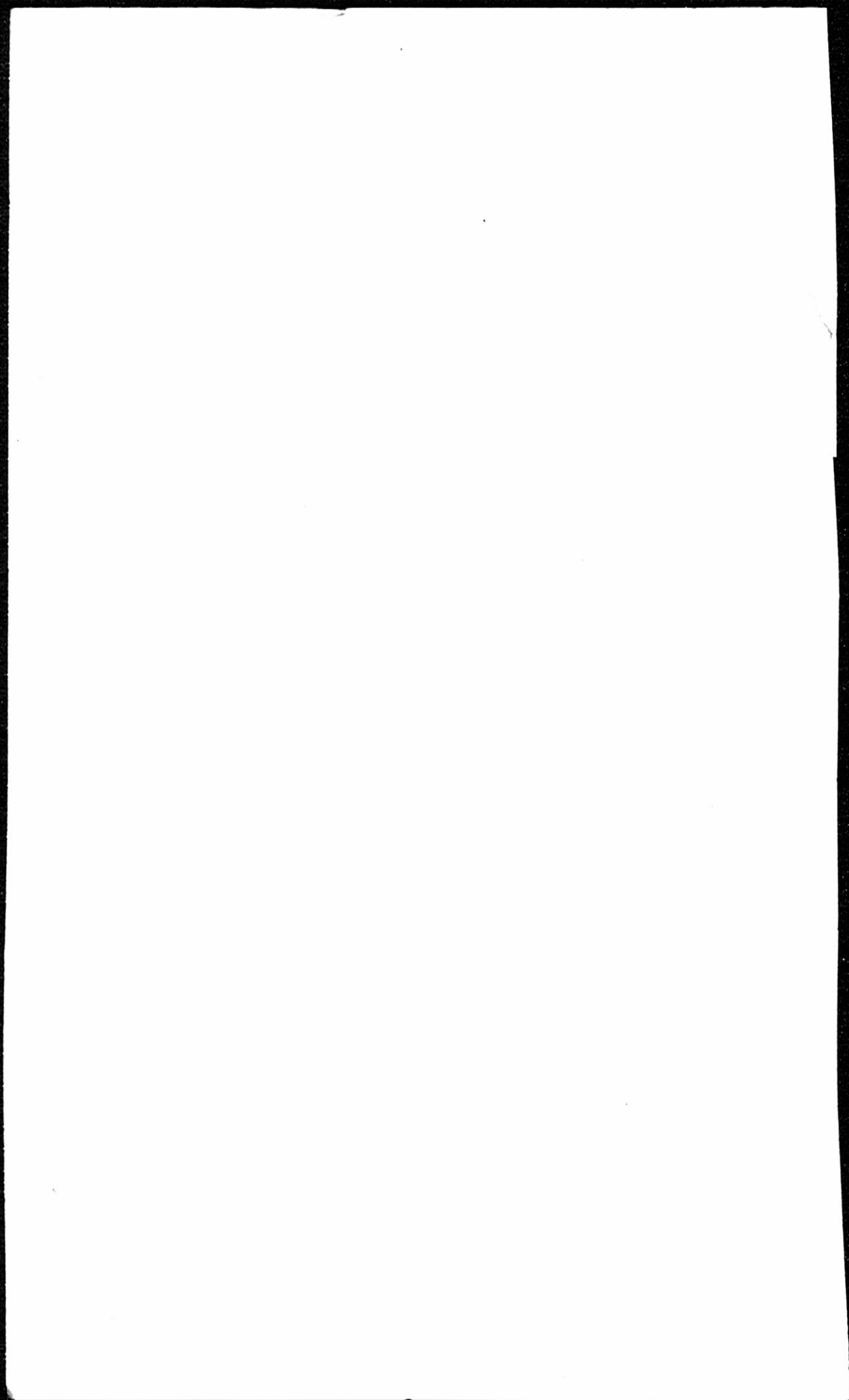
Assistant United States Attorneys.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED JUN 21 1960

Joseph W. Stewart

CLERK



QUESTIONS PRESENTED

In the opinion of the appellee the following questions are presented:

1. Where appellant was sixteen years old in 1942 and had been arrested for murder, and where the Juvenile Court waived jurisdiction over appellant pursuant to Title 11, D.C.C. § 914 did not the District Court have jurisdiction to redetermine whether to proceed criminally against appellant or under juvenile procedure and ultimately to accept his plea of guilty to second degree murder?

2. Where appellant pleaded guilty without objecting to the discretionary determination to proceed against him under the indictment, rather than by juvenile processes, did not he waive his right to do so?

3. Did not appellant receive a "full investigation" before being proceeded against under the indictment when, after the Juvenile Court's interlocutory decision, the appellant received a hearing before the Coroner and before the District Court itself where details of the crime and appellant's background were disclosed?

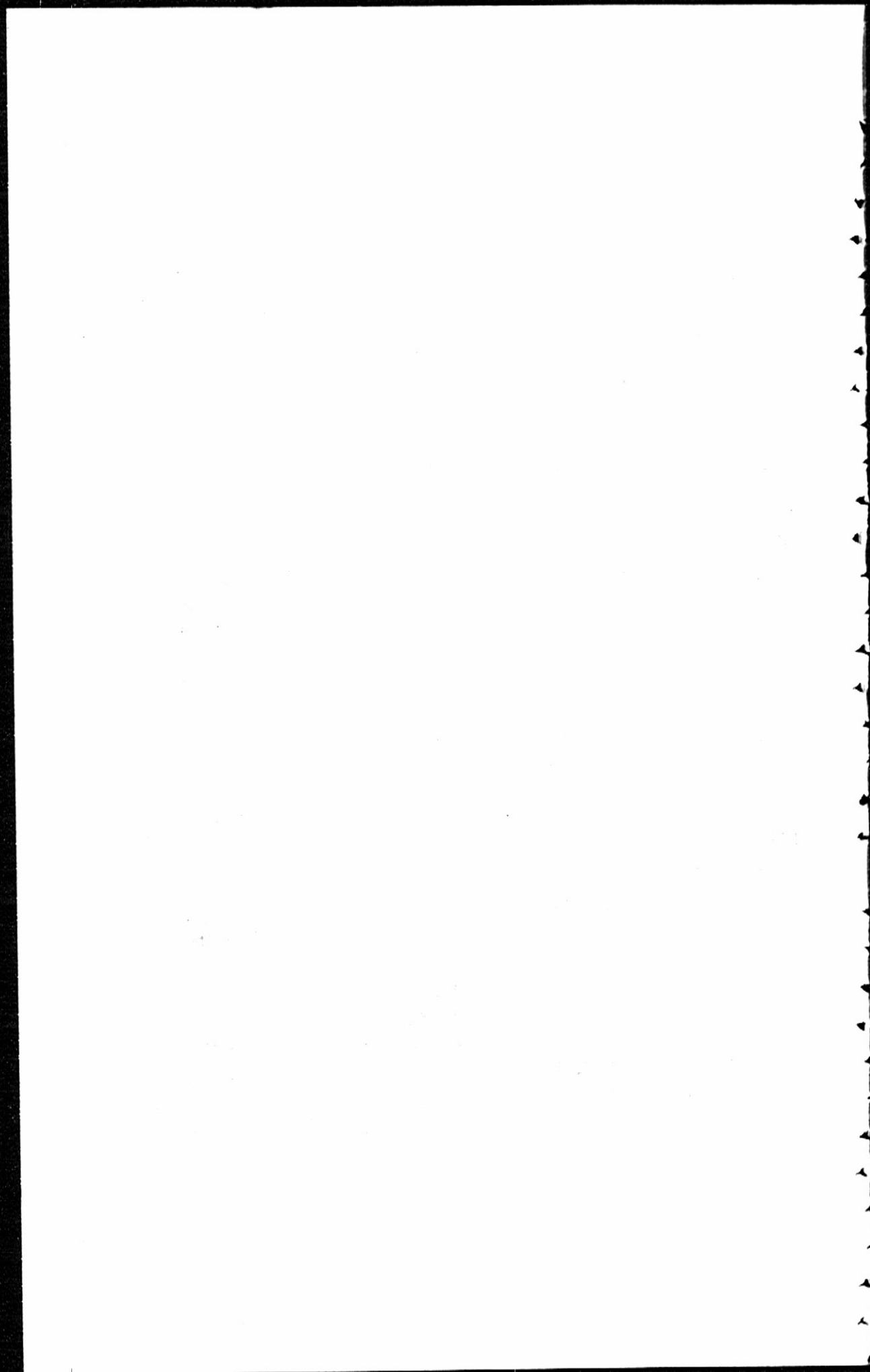
4. Was appellant entitled to a hearing before the Juvenile Court exercised its discretion to waive jurisdiction when the law requires only a full investigation, but no hearing?

5. Should appellant be granted a new trial or a hearing on his Section 2255 motion where such motion, his fourth filed since 1946:

(a) contains belated allegations not raised before, but yet known to appellant since his plea of guilty in 1942;

(b) abandons an issue (that of mental competency) belatedly raised in appellant's third motion in 1956;

(c) where appellant raises for the second time the issue of jurisdictional waiver by the Juvenile Court, having previously raised it in the District Court, and before this Court in 1956 (Misc. 622) where he was denied leave to appeal in forma pauperis.



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15688

RICHARD L. WILHITE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

This case is before this Court on appeal from the denial without a hearing of appellant's fourth motion to vacate his sentence.¹ The District Court denied relief under this last motion on February 25, 1960 (J.A. 20), and notice of appeal was filed on March 14, 1960 (J.A. 21). This Court by order dated April 25, 1960, allowed the instant appeal in forma pauperis to the extent of printing the Joint Appendix at government expense.

On April 15, 1942, the appellant stabbed to death Madeleine G. Matthes (J.A. 2, and Indictment J.A. 4-9). He was sixteen years of age at the time (J.A. 13). On April 17, 1942, Judge Fay M. Beatty of the Juvenile Court of the District of Columbia waived jurisdiction of the Juvenile Court over the cause and ordered appellant to be held for trial under the regular procedure of the District Court (J.A. 12). The order read in part:

¹ 28 U.S.C. 2255.

"After investigation, pursuant to Section 13 of the Juvenile Court Law, as amended, in the case of *Richard L. Wilhite*, the Juvenile Court waives jurisdiction. * * *

On April 18, 1942, the Coroner's Jury held appellant responsible for the death of the deceased and ordered him held for action of the Grand Jury (See verdict of Coroner's Jury filed April 20, 1942). One month later appellant was indicted for first degree murder (J.A. 4). On June 5, 1942, appellant filed a petition for a lunacy inquiry. The inquiry was ordered on June 10, 1942. (J.A. 1.) After more than two days of hearing the jury returned a verdict that the defendant was sane (J.A. 2). On February 16, 1943, after trial had begun, appellant entered a plea of guilty to the lesser included offense of second degree murder. He was sentenced to a term of fifteen years to life imprisonment. (J.A. 2, 10.) During the foregoing proceedings in the District Court the appellant was represented by counsel (J.A. 1, 10).

On March 14, 1946, appellant, represented by other counsel, filed a motion to set aside the plea and sentence. This motion was argued and denied on July 23, 1946. (J.A. 2.) The motion was based upon the assertion that at the time of the plea appellant was of unsound mind. (See: Motion to Set Aside Plea and Sentence filed March 14, 1946.) No appeal was taken.

Again on April 9, 1952, appellant filed a motion attacking his sentence. This time his assertion was that the District Court lacked jurisdiction to accept the plea and adjudge the sentence because appellant was a juvenile. He also asserted that after arrest he was unlawfully detained in jail inasmuch as he was a juvenile. (J.A. 10-11.) This motion was denied on April 30, 1952, with the notation that there had been a waiver of jurisdiction by the Juvenile Court (J.A. 12). No appeal was taken.

It was almost four years later on January 12, 1956, that appellant filed another motion to set aside the sentence. In this instance he again asserted that the District Court lacked jurisdiction. The reason given this time was that there was a defective waiver of jurisdiction by the Juvenile Court. He also asserted, for the first time, that he was "forced to enter

a plea of guilty against his will" (J.A. 15). (J.A. 13-15.) This motion was denied by the District Court on January 18, 1956 (J.A. 15).

Appellant sought to appeal this denial. By order dated March 16, 1956, this Court on consideration of the petition, the opposition and the answer to the opposition denied the petition. See Misc. 622.

After another four year period, the appellant on January 12, 1960, filed a fourth motion attacking his sentence. In this motion he asserted, for the first time, that he was unlawfully detained in a cell at Number One Precinct Station for four or five hours, that thereafter he was transported to Police Headquarters. He further asserted that he was "placed in the line-up three (3) times and then taken by police and detectives into a room, within police headquarters, made to answer all questions asked by both the police and detectives, and questioning took place about five (5) or six (6) hours, and then petitioner who was made to stand during the five (5) or six (6) hours of questioning, was told that if petitioner signed a confession, petitioner would be allowed to sit down, petitioner signed the confession, * * *" (J.A. 17.) Appellant again attacked the waiver of jurisdiction by the Juvenile Court on the ground that the Court's action was defective (J.A. 19). This appeal is from the denial of that last motion (J.A. 21).

STATUTES INVOLVED

Title 28 U.S.C. § 2255 provides, in pertinent part:

Federal custody; remedies on motion attacking sentence.—A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or re-sentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Title 22, District of Columbia Code, Section 2401 (1940 Ed.) provides in pertinent part:

Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.—Whoever, being of sound memory and discretion, kills another purposely, either of deliberate and premeditated malice or by means of poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary * * *

Title 22, District of Columbia Code, Section 2403 (1940 Ed.) provides:

Murder in second degree.—Whoever with malice aforethought, except as provided in sections 22-2401, 22-2402, kills another, is guilty of murder in the second degree.

Title 11, District of Columbia Code, Section 914 (1940 Ed.) provides:

Waiver of jurisdiction in case of felony—Transfer of case.—If a child 16 years of age or older is charged with an offense which would amount to a felony in the case of an adult, the judge, after full investigation, may waive jurisdiction and order such child held for trial under the regular procedure of the court which would have jurisdiction of such offense if committed by an adult; or such other court may exercise the powers conferred upon the juvenile court in this chapter in conducting and disposing of such case.

SUMMARY OF ARGUMENT

I

Appellant was properly adjudged and sentenced on his plea of guilty in the District Court. That Court had jurisdiction over the person of appellant. Jurisdiction over the cause was obtained through the waiver of the Juvenile Court. A presumption of regularity must be afforded to that waiver.

Moreover, having failed to raise any objections to the sufficiency of the Juvenile Court's investigation, upon which the waiver was based, appellant waived such personal defense when he pleaded guilty. He could have presented any matters in this regard to the District Court for its redetermination of the issue of how to proceed, but chose rather to let that Court hear of his background and fitness for juvenile proceedings during the presentation of other matters before the Court. He cannot obtain relief now, after eighteen years, by collateral attack. He should have raised his objections at the District Court before his plea and if unsuccessful, by direct appeal.

Appellant was not entitled to a hearing before the Juvenile Court exercised its discretion in waiving jurisdiction. Title 11, D.C.C., § 914 does not require such a hearing, or particular findings of fact. Nor is such required by judicial interpretation of § 914, *supra*. Waiver of jurisdiction in this instance was purely a matter of judgment similar to sentence, probation and parole. Appellant, being over sixteen years of age, had no right to be proceeded against under the *parens patriae* plan. It was only a privilege.

However, since the District Court must also redetermine the issue of whether to proceed criminally or under Juvenile Court procedures, appellant did receive the "full investigation" by hearing which he asserts was denied him. There was a Coroner's inquest, results of which were available to the District Court. Also, there was a full two day sanity hearing before the Court and a jury where appellant received ample opportunity to present his complete background. After receiving this information regarding appellant the Court made the final determination as to how to proceed. Thus appellant did receive the hearing he now says was denied him.

II.

Appellant is not entitled to a hearing on his motion, or to a new trial. He is proceeding by way of collateral attack for the fourth time, and has made belated allegations. His first motion, in 1946, raised only the issue of mental competency. That issue had been finally decided by the jury at the sanity inquiry. Moreover, appellant did not appeal from the denial of his first motion. He was represented by counsel at the hearing on that motion. In addition, this Court has rejected this contention, when it was raised again in appellant's attempt to appeal the denial of his third motion. See Misc. 622.

Appellant's other allegations are likewise contained in successive motions for similar relief. He shows no reason why he was previously unable to assert these rights. For this reason, if for none other, appellant is entitled to no relief. However, the motion, files and records of the case also show conclusively that appellant is entitled to no relief.

ARGUMENT

I. The proceedings in the District Court were proper

A. A presumption of regularity must be afforded to the action of the Juvenile Court

In effect appellant asserts that jurisdiction in the District Court was lacking because of a presumed defect in the waiver of jurisdiction by the Juvenile Court. He says this defect lies in the fact that waiver of jurisdiction was effected by the Juvenile Court without a "full investigation" as provided for in Title 11, D.C.C. 914. There is nothing in the record to support his contention that such an investigation was not made. What information the Juvenile Court possessed on appellant regarding his general background before the offense as well as the offense itself is not disclosed in this record. The matter, however, was undoubtedly brought to that Court's attention.

However, the basis for the Juvenile Court's waiver of jurisdiction need not be the subject of inquiry at this point. The presumption in favor of the regularity of judicial proceedings must be granted full indulgence.¹ More particularly in criminal prosecutions of juveniles in criminal courts, a presumption of regularity regarding the exercise of discretion as to how to proceed is always afforded to the judgment. *Ex parte Downs*, 95 Cal. App. 571, 273 P. 143 (1928) and *People v. Machado*, 149 Cal. App. 2d 520, 209 P. 2d 903 (1957). See also *Juvenile Court v. State*, 139 Tenn. 549, 201 S.W. 771 (1918).

In the *Machado* case, *supra*, the Court said:

"In our opinion all that need be established to confer jurisdiction upon the superior court to try a minor * * * under general law is proof of the juvenile court's finding of unfitness."

The court concluded that it was unnecessary to show each and all of the steps of the juvenile court leading up to and culminating in its order. We submit that the signed waiver in the instant case is all that is required to show the Juvenile Court's

¹ *Jones v. Huff*, 80 U.S. App. D.C. 254, 152 F. 2d 14 (1946).

exercise of discretion² and is all that is required to confer jurisdiction over the subject-matter in the District Court.³ The form of the waiver itself reflects that it is in accordance with the law (J.A. 12).

The matter of waiver of jurisdiction by the Juvenile Court is within the judgment of the court similarly to the matter of sentence, probation and parole. *Briggs v. United States*, 96 U.S. App. D.C. 392, 226 F. 2d 350 (1955). "It is an imponderable, a true exercise of judgment" *Briggs v. United States*, *supra* at p. 352 of 226 F. 2d.

It might also be observed, since appellant is proceeding by way of collateral attack, that in *Ex parte Downs*, *supra* the Court held that the lower court's determination regarding jurisdiction, *even though erroneous*, is binding against collateral attack. By this we do not suggest, as appellant does, that the Juvenile Court's waiver in the instant case was inadvertent or defective. However, even if it was, collateral attack can not obtain the relief sought by appellant. See also *People v. Langford*, 134 N.Y.S. 712, 206 Misc. 628 (1954) appeal dismissed 137 N.Y.S. 846.

Appellant's authorities for his proposition that the Juvenile Court's action resulted in a failure of jurisdiction in the District Court are inapposite to the instant case. In *Cullins v. Williams*, 156 Ky. 571, 160 S.W. 733 (1913), on which appellant relies, the issue was a defective service of process in a custody proceeding wherein a petition must have been filed and was not. In the instant case neither a petition or any pleading need have been filed, nor was it necessary to effectuate service of process in the Juvenile Court. See *infra*: Sub-heading "C" and *Dickerson v. United States*, *infra* and *United States v. White*, *infra*.

² See *Wade v. Warden of State Prison*, 145 Me. 120, 73 A. 2d 128 (1950) and particularly the concurring opinion of Justice Merrill beginning at page 135 of 73 A. 2d. See also *McGinnis v. State*, 201 Miss. 239, 29 So. 2d 109 (1947). Compare: *Briggs v. United States*, 96 U.S. App. D.C. 392, 226 F. 2d 350 (1955). Discretion, akin to that of the Juvenile Court in the District of Columbia, is vested in the Attorney General under 18 U.S.C. 5023 regarding juveniles in other Federal jurisdictions.

³ *Ex parte Tassey*, 81 Cal. App. 287, 253 P. 948 (1927) and *infra*, p. 9. For jurisdiction over subject-matter and person see generally, 14 Am. Jur. Criminal Law §§ 119 and 214.

In *Juvenile Court v. States*, 139 Tenn. 249, 201 S.W. 771 (1918), relied upon by appellant, there was a special statute divesting the Juvenile Court of jurisdiction where there was evidence that the child was probably guilty of murder. No such statute is in force in the District of Columbia.

Thus it would appear that the District Court proceeded upon a proper basis after the waiver by the Juvenile Court. At least appellant can not now challenge by collateral attack the existing waiver by the Juvenile Court.

B. Appellant is now precluded from objecting to the waiver of the Juvenile Court

We agree with the proposition that there must be a waiver of jurisdiction by the Juvenile Court before the District Court can act. The fact of the waiver must be established. *Wade v. Warden of State Prison, supra*. In this case that fact is unchallenged (Br. 1). Therefore jurisdiction over the subject-matter was acquired by the District Court. *Wade v. Warden of State Prison, supra*.

Appellant challenges the sufficiency of the basis for the waiver (Br. 13-14). This does not effect the fact of the waiver, but goes rather to the proposition that no subjective determination as to appellant's fitness for juvenile proceedings was made. This challenge effects jurisdiction over the person of the appellant, which may be waived. *Ex parte Tassey*, 81 Cal. App. 287, 253 P. 948 (1927); see generally 14 Am. Jur., Criminal Law §§ 119 and 214. Compare *People v. Luzovich*, 127 Cal. App. 465, 16 P. 2d 144 (1932), *Harris v. Alvis*, 157 OS 182, 104 N.E. 2d 182 (Ohio 1950); *Jones v. State*, 157 Tex. Cr. Rep. 382, 248 S.W. 2d 928 (Texas 1952), *Mellott v. Alvis*, — OS —, 162 N.E. 2d 623 (Ohio 1959) for waiver by juveniles in criminal proceedings.

In the instant case appellant made such a waiver when he failed to object to jurisdiction over his person, but instead pleaded guilty. Such a plea is a waiver of any such defenses he might have had. He must plead to jurisdiction over his person beforehand, *Ford v. United States*, 273 U.S. 593 (1926).

C. A hearing need not be conducted before Juvenile Court waiver of jurisdiction

Appellant relies upon the statement in *Dickerson v. United States*, — U.S. App. D.C. —, 271 F. 2d 487, 491 (1959) that an investigation under Title 11, D.C.C. § 914 "includes" informal hearings as provided for in Section 915 of Title 11, *supra*. He implies that this language requires such a hearing prior to waiver. Such a conclusion would do violence to the language of Section 914, *supra*. That Section does not require a hearing. This fact makes inapposite *Edwards v. Commonwealth*, 264 Ky. 4, 94 S.W. 2d 25 (1936) cited by appellant, because the Kentucky statute requires a hearing.

The *Dickerson* case *supra* did not deal with this issue, but rather with whether jeopardy attached to an informal hearing conducted by the Juvenile Court to aid in the exercise of its discretion to waive jurisdiction. The holding in *Dickerson* was simple that in the Juvenile Court's duty to investigate under Section 914, *supra*, such a hearing could be held without placing the prospective defendant in jeopardy. The holding did not interpret Section 914 to require a hearing before waiver of jurisdiction.

Since juvenile proceedings are non-criminal in nature, *Pee v. United States*, — U.S. App. D.C. —, 274 F. 2d 556 (1959), we submit that the "investigation" in question is somewhat analogous to some administrative procedures. Where the term has been used without the additional requirement of a hearing, it has been interpreted to mean an ex parte exercise of discretion. See *Jordan v. American Eagle Fire Insurance Co.*, 83 U.S. App. D.C. 192, 196, 169 F. 2d 281, 285 (1948) and *N.L.R.B. v. Sharples Chemicals*, 209 F. 2d 645 (6th Cir., 1954).

Appellant relies heavily upon *State v. Van Buren*, 29 N.J. 548, 150 A. 2d 649 (1959) for the proposition that a juvenile's right to "due process" requires a hearing before waiver. Such is true in New Jersey, for as can be seen from that case the statute in question, unlike Section 914, *supra*, requires specific determinations that the juvenile is an habitual offender, and is charged with a heinous crime and may require a criminal sentence. Moreover the New Jersey statute specifically re-

quires that a hearing be conducted.⁴ No such requirements are expressed in Section 914, *supra*, and none should be implied. *Briggs v. United States*, 96 U.S. App. D.C. 392, 226 F. 2d 350 (1955).

In *Stevenson v. United States*, 170 F. Supp. 315 (D.C.D.C. 1959) the precise question was whether the District Court "lacked jurisdiction to indict because of alleged invalidity of the Juvenile Court's waiver of jurisdiction." The District Court, through Judge Keech said:

"It is the view of this court that D.C.C. Sec. 11-914 does not require, as a prerequisite to waiver, that the Juvenile Court Judge personally make the 'full investigation' prescribed by the statute, but that the only requirement is that the judge be fully advised of relevant facts, by such means as are available to him through the various branches of the Court so that he may intelligently exercise his discretion. To construe the statute otherwise would place an undue and unnecessary burden upon the judge, would be of little or no advantage to the child whose case is under consideration, and would inure to the detriment of other youngsters by denying them adequate and timely consideration by the judge."

Surely then, without specific legislation requiring a hearing before waiver of jurisdiction,⁵ none is required at present. See *Briggs v. United States*, *supra*.

Moreover, it would appear that the appellant had no right to be proceeded against as a juvenile. He was over sixteen years of age. Being of such an age, the law (Title 11, D.C.C. § 914) granted him the privilege of insulation from criminal proceedings, but not the right. *People v. Langford*, 134

⁴ Statutes in other jurisdictions, unlike the District of Columbia, establish criteria and require a hearing before waiver of jurisdiction can be effected. See: *Tilton v. Commonwealth*, 196 Va. 774, 85 S.E. 2d 368 (1955); *State v. Falbo*, — Mo. —, 333 S.W. 2d 279 (1960); *Ex parte Lewis*, 85 Okl. Cr. 322, 188 P. 2d 367 (1947). But see *Mellott v. Alvis*, — OS —, 162 N.E. 2d 623 (Ohio 1959), *United States v. Madsen*, 148 F. Supp. 625 (D.C. Alaska 1957). See also *Briggs v. United States*, 96 U.S. App. D.C. 392, 226 F. 2d 350 (1955). Cf. 18 U.S.C. 5032, *supra*, n. 2.

⁵ And perhaps an increase in the size of the Juvenile Court itself.

N.Y.S. 712, 206 Misc. 628 (1954) appeal dismissed 137 N.Y.S. 846 (1955).

When a case is brought to the attention of the Juvenile Court that Court may take three possible courses of action. First of all, however, an investigation must be made to determine the basic details and background of the child. See Title 11, D.C.C. Section 908, and *United States v. White*, 153 F. Supp. 809 (D.C.D.C. 1957). Once the investigation is completed the Court may determine that the filing of a petition is required, or that the case be ignored. In the case of felonies, a third course is open. That is to waive jurisdiction to the District Court. The Court in this instance took the latter approach "[a]fter investigation, pursuant to Section 13 of the Juvenile Court Law" (Section 914, *supra*) (J.A. 12).

D. In any event appellant received a hearing and adequate investigation

Assuming, without conceding, the inadvertence of the waiver of jurisdiction by the Juvenile Court, the appellant is in no position to complain because that action was merely interlocutory in nature. The appellant was placed in the "initial stages" which would eventually bring him to trial. *Pee v. United States*, — U.S. App. D.C. —, 274 F. 2d 556 (1959). But the ultimate issue at stake here, whether to proceed criminally or under the *parens patriae* plan, was still to be made by the District Court. That court redetermined that issue before it allowed the case to proceed on the indictment. *Pee v. United States, supra*.

Before the District Court proceeded under the indictment appellant received the full investigation he asserts was denied him. The day following the waiver by the Juvenile Court an inquest was held by the Coroner. Such a hearing is sufficient to comply with the requirement of full investigation under Section 914, *supra*. *United States v. Madsen*, 148 F. Supp. 625 (D.C. Alaska, 1957).

In Alaska, at least before statehood, the statutory system for dealing with juveniles was in substance the same as in this jurisdiction. See page 631 of 148 F. Supp. Under that statutory framework the court stated at page 632 of 148 F. Supp.:

"What would constitute 'full investigation' for the purpose of waiving jurisdiction is not spelled out in the statute but surely an investigation conducted by a coroner into the death of the victim would amply comply with the requirements of the statute."

Such an inquiry and more was had in the instant case before the District Court determined to proceed under the indictment instead of the *parens patriae* plan. Even after the Coroner's inquest the court conducted the lunacy inquiry, where it may be presumed the entire background of appellant was disclosed to the judge and considered by him. It was after all these facts were before the District Court that the final determination was made to proceed criminally.

Thus it is seen that the Juvenile Court's waiver of jurisdiction appears and must be presumed to be valid. Even if it was not, however, appellant waived any right to object to deficiencies therein by pleading guilty without registering his objection. Moreover, the issue was ultimately determined by the District Court (which could have acted as a juvenile court), after a Coroner's hearing into responsibility for the crime, and after a hearing involving the background and nature of appellant himself.⁶ Certainly the District Court had jurisdiction to redetermine how to proceed.

II. Appellant is not entitled to a new trial, or to a hearing on his motion under § 2255

Appellant asserts that there are sufficient allegations in his last motion collaterally attacking his sentence to entitle him to a hearing or a new trial.⁷ He also attempts to resurrect the

⁶ Appellant alludes (Br. 17) to the idea that jurisdiction of the District Court failed because the waiver of jurisdiction did not become a matter of record in the District Court until April 2, 1952. Though there is nothing to reflect that such order was not physically before the Court in 1942, the point is of no concern. Failure to transmit to the criminal court a copy of the order of jurisdictional waiver until the issue is raised is not fatal to jurisdiction. *Childers v. Commonwealth*, 239 S.W. 2d 255 (Kentucky 1951).

⁷ A new trial at this time, some eighteen years after the offense, would be tantamount to an outright release of appellant. See: *United States v. Smith*, 179 F. Supp. 684 at 686 and cases cited (D.C.D.C., 1959). See also: *Smith v. United States*, 106 U.S. App. D.C. 169 at 185 footnote 1, 270

already adjudicated issue of mental incompetency. This issue, however, was definitely decided by a jury after full hearing at the sanity inquiry prior to appellant's plea (J.A. 2). It was again raised and argued at a hearing in appellant's first attempt at collateral attack in 1946 (See: Motion to Set Aside Plea and Sentence filed March 14, 1946). Appellant again failed to prevail (J.A. 2) and he took no appeal. This issue was not again raised until his third motion in 1956 (Misc. 622)* and has been abandoned in his fourth and latest motion. This Court, by order dated March 16, 1956, rejected the contention now relied upon for the third time.

We submit that this issue is finally disposed of. See *Smith v. United States*, 106 U.S. App. D.C. 169 at 179, 270 F. 2d 921 at 931 where Judge Prettyman quoted from *Stewart v. Overholser*, 87 U.S. App. D.C. 402, 186 F. 2d 339 (1950).

With regard to appellant's contention that his plea was involuntary we submit that he is not entitled to the relief sought. Such contention was contained in "a second or successive motion for similar relief" (28 U.S.C. 2255) and he sets forth no reason why he was previously unable to assert his rights. *Turner v. United States, supra*; *Moore v. United States, supra*. Having entered a plea of guilty to the lesser included offense of second degree murder appellant is not, particularly at this late date, entitled to relief on the grounds advanced. *United States v. Strum*, 180 F. 2d 413 (7th Cir. 1950); *Barber v. United States*, 227 F. 2d 431 (10th Cir. 1955); *Kent v. United States*, 272 F. 2d 795 (5th Cir. 1959). Compare: *Edwards v. United States*, 101 U.S. App. D.C. 3, 256 F. 2d 707 (1958).

Appellant says (Br. 18) that the files and records were not informative on the issues raised. We submit, however, that the record itself plus appellant's many successive motions with their variety of belated allegations form an adequate basis for

F. 2d 921 at 937 footnote 1. (Dissent of Judge Bastian.) Compare: *People v. Langford, supra*.

* Even in Misc. 622 appellant waited until answering the government's opposition before he raised the particular facts now relied upon. He certainly knew of them when he filed his second motion in 1952. *Turner v. United States*, 108 U.S. App. D.C. 313, 258 F. 2d 165 (1958); *Moore v. United States*, — U.S. App. D.C. —, — F. 2d —, No. 15,405, decided May 5, 1960.

the District Court and this Court to conclude appellant is entitled to no relief.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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